

**ORIGINAL**

FILED *Ely*  
U.S. DISTRICT COURT  
NORTHERN DIST. OF TX.  
FT. WORTH DIVISION

## UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

2011 AUG 18 AM 9:45

FT. WORTH DIVISION

CLERK OF COURT

Mayford K. Davis, Jr.,  
Plaintiff

Case No. 4-11 CV-575-A

Vs.

CAPITAL ONE BANK USA,  
Defendant

Judge \_\_\_\_\_

## Trial By Jury Demanded

ORIGINAL COMPLAINT FOR VIOLATIONS OF FCRA, 15 U.S.C. § 1681

*et seq.*

## JURISDICTION AND VENUE

1. The jurisdiction of this Court is conferred by 15 U.S.C. § 1681p and 28 U.S.C. §1331.
2. Venue is proper in this District Court pursuant to 28 U.S.C. § 1391.
3. Venue is proper in the UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS (Ft. Worth Division).
4. All conditions precedent to the bringing of this action have been performed, waived, or excused.

## PARTIES

5. The Plaintiff in this lawsuit is Mayford K. Davis, Jr., a natural person, who resides in Parker County, Texas.
6. The Defendants in this lawsuit is CAPITAL ONE BANK USA with an address of 1680 Capital One Drive, McLean, VA 22102.

## PRELIMINARY STATEMENT

7. This is an action for damages for violations of the Fair Credit Reporting Act (FCRA) 15 U.S.C. § 1681 *et seq.*

## FACTUAL ALLEGATIONS

8. On or about April 20, 2011 Plaintiff pulled his consumer credit report from the credit reporting agency Equifax. Plaintiff found unfamiliar entries that were not authorized as Plaintiff had no business relationship with nor was interested in having a business relationship with CAPITAL ONE BANK USA and there is no evidence to the contrary.
9. Plaintiff does not have an "account", as defined in 15 U.S.C. § 1683a(2), with CAPITAL ONE BANK USA and there is no evidence to the contrary.
10. Plaintiff has neither applied for an "account" with Defendant nor has been presented with an offer of credit and there is no evidence to the contrary.

11. Defendant CAPITAL ONE BANK USA initiated a pull of Plaintiff's consumer credit report on December 08, 2010 from Equifax. Plaintiff has no "account" with nor initiated an action to obtain an account with CAPITAL ONE BANK USA. This consumer credit pull was from Equifax without Plaintiff's permission and therefore is not permissible as no "account" exists with CAPITAL ONE BANK USA and no evidence exists to the contrary.
12. Discovery of this violation brought before this Court occurred within the statute of limitations as defined in FCRA, 15 U.S.C. § 1681p.

## COUNT I

### VIOLATION OF THE FAIR CREDIT REPORTING ACT (FCRA),

15 U.S.C. § 1681

### WILLFUL NON-COMPLIANCE BY DEFENDANT

### CAPITAL ONE BANK USA

13. Paragraphs 1 through 12 are realleged as though fully set forth herein.
14. Plaintiff is a consumer within the meaning of the FCRA, 15 U.S.C. § 1681a(c).
15. Equifax is a credit reporting agency within the definition of the FCRA, 15 U.S.C. § 1681a(f).

16. Consumer credit report is a consumer report as defined in the FCRA, 15

U.S.C. § 1681a(d).

17. The FCRA defines at 15 U.S.C. § 1681b the permissible purposes for which a person may obtain a consumer credit report.

18. As defined by 15 U.S.C. § 1681b permissible purposes are generally as if the consumer makes application for credit, if the consumer makes application for employment, if the consumer makes application for insurance which would require underwriting, or if the consumer is offered a bona fide offer of credit as a result of the inquiry and none of these situations occurred and there is no evidence to the contrary.

19. Plaintiff has never had any business dealings or “account”s, as defined by 15 U.S.C. § 1683a(2), with, made application for credit from, made application for employment with, applied for insurance with, or received a bona fide offer of credit from said Defendant and there is no evidence to the contrary.

20. Plaintiff has never authorized either directly or indirectly CAPITAL ONE BANK USA to obtain Plaintiff’s consumer credit report from any credit reporting agency at any time and there is no evidence to the contrary.

21. Plaintiff discovered on or about April 20, 2011 that Defendant CAPITAL ONE BANK USA initiated with Equifax a pull of his consumer credit report

on October 08, 2010 without a permissible purpose in violation of FCRA, 15 U.S.C. § 1681(b).

22. The obtaining of the Plaintiff's consumer credit report by CAPITAL ONE BANK USA without a permissible purpose or the Plaintiff's consent, either directly nor implied, was a willful violation of FCRA, 15 U.S.C. § 1681(b) and an egregious violation of the Plaintiff's right to privacy and there is no evidence to the contrary.

WHEREFORE, Plaintiff demands judgment for statutory damages of \$1,000 against Defendant CAPITAL ONE BANK USA pursuant to 15 U.S.C. § 1681n, attorney's fees, and costs.

## COUNT II

VIOLATION OF FAIR CREDIT REPORTING ACT (FCRA), 15 U.S.C. §  
1681  
OBTAINING INFORMATION UNDER FALSE PRETENSES BY  
CAPITAL ONE BANK USA

21. Paragraphs 1 through 12 are realleged as though fully set forth herein.

22. Plaintiff is a consumer within the meaning of the FCRA, 15 U.S.C. § 1681a(c).

23. CAPITAL ONE BANK USA is a furnisher of information within the meaning of the FCRA, 15 U.S.C. § 1681s-2.

24. CAPITAL ONE BANK USA presumed to have a permissible purpose for obtaining Plaintiff's consumer credit report without appropriate authorization thus violating 15 U.S.C. § 1681q and there is no evidence to the contrary.

WHEREFORE, Plaintiff demands that CAPITAL ONE BANK USA be fined to the full extent of law under Title 18.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury of all issues as triable as a matter of law.

Dated: Aug. 18, 2011

Respectfully submitted,

Mayford K. Davis Jr.

Mayford K. Davis, Jr.  
216 Camelot Drive  
Weatherford, Texas 76086  
(817) 768-7459

SERVICE TO:  
CAPITAL ONE BANK USA BANK  
Attn: Legal Department  
1680 Capital One Drive  
McLean, VA 22102

## CIVIL COVER SHEET

4-11cv-575-A

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Mayford K. Davis, Jr.

216 Camelot Dr., Wethersford TX 76086

(b) County of Residence of First Listed Plaintiff Parker County, TX

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

## DEFENDANTS

CAPITAL ONE BANK, USA

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
		<b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. 1681 et seqBrief description of cause:  
Violation of FCRA

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

1,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Aug 18, 2011

Mayford K. Davis Jr.

FOR OFFICE USE ONLY

RECEIPT #

FW014989

AMOUNT

\$350.00

APPLYING IFP

JUDGE

MAG. JUDGE